

8th October 1928]

GRANT XXX.—CIVIL WORKS—TRANSFERRED.

The hon. Dr. P. SUBBARAYAN :—"Sir, on the recommendation of His Excellency the Governor, I move

'that Government be granted a further sum not exceeding Rs. 14,300 under Grant XXX—Civil Works—Transferred'

to provide for the construction of a building for the Lady Ampthill Government Secondary School for Girls at Masulipatam.

"Hon. Members have already, I am sure, read the note circulated to them. This school is now being held in two rented buildings. A permanent building is absolutely necessary for the location of this school. I am glad that there is no motion for reduction and hope that the House will sanction the grant."

* The hon. Mr. S. MUTHIAH MUDALIYAR :—"I second it."

The demand was put and carried and the grant was made.

VI

A BILL FURTHER TO AMEND THE COURT FEES ACT, 1870.

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—"Sir, I introduce the Bill further to amend the Court Fees Act, 1870, and move that it be referred to a Select Committee composed of the following members :—

- (1) Rao Bahadur C. V. Ananthakrishna Ayyar,
- (2) The hon. Diwan Bahadur M. Krishnan Nayar,
- (3) Diwan Bahadur P. Kesava Pillai,
- (4) Khan Bahadur P. Khalif-ul-lah Sahib,
- (5) Mr. K. P. Raman Menon,
- (6) Rao Bahadur Sir A. P. Patro,
- (7) Mr. K. V. R. Swami,
- (8) „ J. A. Saldanha,
- (9) „ P. Siva Rao,
- (10) „ T. C. Srinivasa Ayyangar,
- (11) Rao Bahadur K. Sitarama Reddiyar,
- (12) Mr. N. Siva Raj,
- (13) „ C. V. Venkataramana Ayyangar, and
- (14) Rao Bahadur B. Muniswami Nayudu.

In moving this motion I just wish to refer to the important principle contained in this Bill. When the Court Fees Amendment Act was passed by this Council in 1922, one provision was that a smaller rate of fees should be levied in respect of suits of a small cause nature up to a maximum of Rs. 500. The maximum of Rs. 500 was fixed on that occasion for the reason that at that time the maximum small cause jurisdiction possessed by the sub-courts was only Rs. 500. Subsequently, in pursuance of an Act of the Government of India under which the High Court was empowered to enhance the pecuniary jurisdiction of Small Cause courts in the mufassal up to a limit of Rs. 1,000, the High Court passed a notification fixing the maximum limit of the pecuniary jurisdiction of the sub-courts in the mufassal in respect of small causes at Rs. 1,000. In respect of suits of a small cause nature between Rs. 500 and Rs. 1,000 according to the existing Act, the higher scale of fees has to be paid, i.e., the scale of fees applicable to original suits. One

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important object of this Bill is to give the benefit of the lower scale of fees to suits above Rs. 500 and below Rs. 1,000. This provision is made in favour of the litigant public.

"There is also another provision introduced by this Bill and that is by way of enhancement of the rate of court-fees. It is this: Now, suits of a small cause nature are instituted paying the lower scale of fees. Under the existing law, though some of the suits which are instituted are of a small cause nature, they have to be tried as original suits, yet the fees to be levied continues to be the lower rate. Of course it is well known that when suits are tried as original suits they involve more time and more labour both to the court and to the litigant public. And also there is the right of appeal provided. It is thought that it is only reasonable that in respect of suits which are instituted as small cause suits but which have to be tried as original suits the higher scale of fees should be levied. When suits of a small cause nature are to be instituted and tried as small cause suits the lower scale of fees holds good, but when they are instituted as small cause suits but tried as original suits, the higher scale of fees should be levied. Now, as I said, this latter change relating to the enhancement of fees holds good only with reference to suits up to Rs. 500. As the law stands now, in respect of suits whose jurisdiction is above Rs. 500 and below Rs. 1,000, it is the higher scale that is levied. So that the change that is sought to be effected now applies to suits of the value of Rs. 500 and less.

"I may also state, Sir, that these suits which are instituted as small cause suits but which have to be tried as original suits are comparatively few. Therefore, the reduction in favour of the litigating public is very much greater than the enhancement against them.

"I may also say that the Government have thought of the question of revising the rate of court-fees. (Hear, hear from the Opposition benches.) The Government of India have under consideration, by an all-India Bill, the revision of the existing court-fees which is applicable throughout India. They have not yet made up their mind. Pending decision of the Government of India on that point, we thought that we should not wait to give at least this small relief to the litigating public. As I submitted already, the enhancement is very much less than the reduction. It is for the purpose of meeting the demands of my hon. Colleagues often made in this House for the reduction of court-fees that the Government have thought of introducing this Bill. My original intention was to pass through all the stages of this Bill to-day, but in deference to the wishes that have been expressed to me by my respected friends in different sections of the House, I am now moving the motion for referring it to a Select Committee. I have already enumerated the main principles of the Bill and do not wish to go into details now. Any suggestion that may be made by hon. Members of course will be carefully considered in the Select Committee. With these observations I move that this Bill be referred to a Select Committee composed of the members I have already suggested."

The hon. Mr. T. E. MOIR :—"I second it."

The hon. the PRESIDENT :—"The question is that the Bill further to amend the Court Fees Act, 1870, be referred to a Select Committee consisting of the members mentioned."

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* Mr. C. V. VENKATARAMANA AYYANGAR:—"I am sorry to say, Sir, I cannot accept the statement of the hon. Law Member on some points that have been urged by him. We have been always asking for a reduction of court-fees all-round and we all remember Sir, and the hon. the Law Member must remember it much better than many of us, that when this Bill came up in the year 1922, there was a serious attempt made, supported by the present Law Member, to make the measure only a temporary one. I believe that that attempt was defeated by a small majority. Year after year practically, in the budget session, we, including the hon. the Law Member, have been carrying token motions to the effect that the court-fees levied in this presidency should be reduced wholesale.

"It has been usual with the Treasury Bench to say that the Government of India have been considering this very important question and therefore they do not take it on hand. Many of us have been agitating for the separation of the judicial and executive functions and one reply which the Government have uniformly given is that the Secretary of State and the Government of India would deal with this as an all-India question. This has been going on for the past six or seven years without any prospect of settlement. Now in this case also the hon. the Law Member says that the Government of India are going to treat this as an all-India question. Seeing that public opinion in the country is very strong in favour of the reduction of the court-fees, the Government want to take shelter under the plea of the Government of India treating this as an all-India question. When and how, nobody knows, not even the Government of India. We have always claimed that this question must be dealt with immediately. We must thank the hon. the Law Member for small mercies. But unfortunately the good dose of medicine is mixed with a big dose of poison, as the hon. the Finance Member would sometimes say. We are told that we would be given a little relief by way of increasing the maximum from Rs. 500 to Rs. 1,000. At the same time, the one great remedy that the poor litigants have now got in suits of a small cause nature up to Rs. 500 is taken away to a large extent. I do not know whether it will be retained in the Select Committee. My contention is that if that is not removed the poor litigants will be seriously affected. This present Bill will not benefit the Coimbatore district people at all; on the other hand it would tax them much more. The hon. the Law Member says that Government are giving a small relief though they cannot give relief to the full extent. In Coimbatore district Sub-Judges do not at all try small cause suits; District Munsifs alone try them. All suits up to Rs. 500 of a small cause nature are now paid for at a lower rate. If this Bill is passed into law, the whole of Coimbatore will have to pay a higher rate. There may be other districts where Sub-Judges may be authorized to try small cause suits up to Rs. 1,000. But I do not know in how many of those districts Sub-Judges are exclusively privileged to dispose of suits of a small cause nature. It is for these districts probably that there will be some relief.

"The hon. the Law Member said that the suits tried on the original side take a good deal of time. I do not think so. Most of the original suits of a small cause nature are of an uncontested nature as they relate mostly to bonds and they do not take much time. We have been saying that only half the fee should be levied in cases of uncontested suits and *ex-parte* suits. Simply because a small cause suit is called original suit number so and so,

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the hon. the Law Member wants us to pay enhanced fees. It may be that to-day I may file a small cause suit before a District Munsif having lower small cause jurisdiction; and to-morrow when he is transferred and when a District Munsif having higher jurisdiction occupies that place, am I to pay higher fees? Then another District Munsif may come with lower small cause powers; in that case will the Government refund the higher fees? The original principle of determining whether a suit is of a small cause nature or not was very good. All suits of a small cause nature wherever tried and by whomsoever tried should be exempted.

"As regards appeals, we know the result of appeals; they are as a rule dismissed with costs. Many courts have got stereotyped forms. I do not see why we should be asked to pay more in the case of suits in which there may be a chance of appeals. Our plea is that the Government is wrong in bringing this small measure when we have been asking for a big measure. This gives no relief at all but adds some burden. If they want to give relief, let them give undiluted relief; let there be no cause for grievance. This Bill will not help the public in several districts by one pie; on the other hand, it will be a means of additional taxation. I hope the Select Committee will remove the obnoxious portions of the Bill. I shall only assure the hon. the Law Member that we won't take it fully. I hope that they will take away the poisonous portion of the Bill and give us the good portion of it. I also hope the Government would agree to the Council and Select Committee taking away the injurious portion of the Bill and retain the good portion of it."

* Mr. R. SRINIVASA AYYANGAR :—"Mr. President, Sir, I should like to make a few observations in regard to the Bill now under consideration. Though at first sight it may seem innocuous, it will create practical difficulties in its actual working. This is a taxation measure and it is unfortunate that the sponsor of the measure should be one who has all along stood by the people and fought at the time of the budget discussion for the reduction of the court-fees. But now he is not so much to blame as the bench on which he now sits. His new position has brought about a change in him though unconsciously or unwittingly. He has been a sturdy fighter on this side of the House and it is rather unfortunate that he should be a party to this measure of a far-reaching nature. I object to the proviso which ought to be removed.

"Again in the Statement of Objects and Reasons it is said: 'There is no reason or justification to charge the lower scale of fee in the case of plaints and written statements pleading a set-off or counter-claim in suits which are not actually filed and tried as small cause suits. It is therefore considered expedient. . . Not from the tax-payer's point of view, but from the tax-gatherer's point of view—to restrict the scope of article 2 to such suits as are filed and tried as small cause suits. As a consequence, plaints or written statements pleading a set-off or counter-claim in suits which are of a small cause nature will fall under article 1 if filed as original suits or if, though filed as small cause suits, are not tried as such.'

"I must protest against any court-fee, small or great, being made to depend on geographical limits or upon the jurisdiction of the particular judicial officers. There are sub-courts which have jurisdiction only over

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municipal areas. Take for instance the sub-court at South Arcot. The sub-Judge has jurisdiction over the municipal area and his power is limited to Rs. 1,000. For areas outside the Cuddalore municipal area, we have two District Munsifs whose powers extend up to Rs. 300 in small cause suits. It is difficult for me to understand why particular privileges conferred on persons residing in a particular area who resort to the sub-courts for the purpose of filing their suits, should not be extended to the same class of suits in the case of persons who are obliged, by reason of distribution of jurisdiction, to file their suits in the munsif's court on the original side. In civil courts the minimum jurisdiction of a District Munsif is Rs. 100 and the maximum is Rs. 300. And Munsifs are constantly transferred. There are courts presided over by only one Munsif. Suppose there is a District Munsif whose small cause jurisdiction is only up to Rs. 100. If I file a suit before him for Rs. 120, I will have to pay a higher fee. Though it may be a suit of a small cause nature it is not cognizable by him as a small cause matter since it is beyond his pecuniary jurisdiction. Therefore I will have to pay an extra court-fee. But suppose before it comes up for trial this acting Munsif with a limited jurisdiction is transferred and a senior Munsif with higher jurisdiction say up to Rs. 300 is put there, no opportunity is given to the party to convert the case into a small cause one and no refund is admissible. This is hardly fair. Take the converse case. A court is presided over by an officer who has jurisdiction up to Rs. 300. I file a suit for Rs. 200 and I pay the court-fee on the lower scale. Before the suit matures for trial this Munsif is transferred and his place is taken by another Munsif with a lower jurisdiction. I want to know from the hon. the Law Member whether under this Bill the plaint will not be returned to the parties requiring them to pay up the difference in court-fee. Is this fair, I ask? This is another aspect which I would ask the Government to consider.

"Again, Sir, there does not seem to be a uniform standard of levying court-fees. If I file a suit in a District Munsif's court for Rs. 400, in some courts a lower court-fee is charged on Rs. 300 and a higher court-fee on Rs. 100. In other courts they adopt a different procedure by insisting upon a higher court-fee being paid on Rs. 400. Therefore the procedure is by no means uniform. Moreover the idea here seems to be to give a sort of relief to the persons who are obliged to go to courts in cases of a small cause nature for getting immediate relief. Therefore the best thing will be to do away with the proviso altogether and not to charge a higher court-fee dependant on the contingency of the suits being tried as original suits. The best thing will be for the Government to substitute the words, 'up to Rs 1,000' for the words 'up to Rs. 500,' which we find in the present Act. That will give relief. Government also must drop the proviso altogether, which in the majority of cases, whether intended or not, is likely to cause a considerable amount of hardship, in view of the fact that the Government have no control over the posting or transfer of District Munsifs. Therefore, as I began so I shall end by saying that the payment of a higher or lower fee ought not to be made to depend on the contingency of a particular set of officers being posted to hear the cases. I hope that this aspect of the question will be considered by the Select Committee. Otherwise this will be regarded as a taxation measure, enabling the Government to enhance the court-fee in certain classes of cases and is likely to meet with popular disapproval. All these years we have been agitating for a reduction in the

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court-fees and for restoration to the old level. Especially in the year of grace 1928, when the financial pendulum is swinging normally and normal financial condition exists it is futile to think of enhancing the court-fees, with a view to get extra income out of it. I oppose the motion. A comprehensive Bill carrying out the wishes of the House and not a piecemeal legislation of this unsatisfactory nature ought to be brought forward.

4 p.m.

"Therefore what I would submit is 'let there be one standard scale of fees up to Rs. 1,000.' One suit may be filed in a munsifi's court or in a sub-court. So far as the sub-court is concerned, it can be filed only on the small cause side because its jurisdiction goes up to Rs. 1,000. In the case of munsifs' courts it varies from Rs. 100 to Rs. 300. Even though suits of and above the value of Rs. 300 upto Rs. 1,000 can be filed on the original side of the munsifs' courts, it is up to the Government to relax the rule by conferring upon them a concession which, I think, the litigant population really deserve."

* Mr. K. R. KARANT :—"Mr. President, Sir, I oppose this motion altogether. I do not think that it is necessary that this Bill should go before a Select Committee. If the Government are really earnest that court-fees should be reduced, they can come forward with a separate Bill. So far as the constitution of the Select Committee is concerned, it is largely composed of Members of only a certain section of the House. I do not think there is much scope for the Bill to come out of the Select Committee for the good of the litigant public. The hon. the Law Member was very much pleased to tell us that this is one part of the attempt by the Government to give relief to the litigant public. The Government recently gave answer to a certain question put by me. In the question put by me I referred to the speech made by the predecessor in office of the hon. the Law Member on 16th March 1927 during the budget debate when the question of court-fees was considered. The hon. Sir C. P. Ramaswami Ayyar said :—'And all that I can at the present moment say on the matter is, as I said in my speech on the last occasion dealing with this matter, that I realize that the present rates of court-fees have worked hardships with regard to certain classes of land suits and certain classes of money transactions.' The hon. Member from Coimbatore said 'lip sympathy.' Then the hon. the Law Member went on to say :—

'With reference to the interruption of my hon. Friend from Coimbatore, who is always adroit in interrupting, I may say that he must remember that I am a lawyer and my natural tendency will be in favour of cheap litigation. But quite apart from that, the Government of India are considering the subject of all-India legislation in order to get rid of some of the inequalities of the present system ; and all that I can say is that when the Government of India asks for our opinion, in all probability, very soon, we shall give our opinion on the matter. Speaking for myself, my opinion is on record and the position that I desire to take is that if within, say, three months or six months no such step is taken, I have no objection to appoint a committee for the purpose of considering this matter in order that the inequalities referred to may be reduced by a suitable amendment of the Court Fees Act.'

"This was said on the 16th March 1927. The periods of three months and of six months have expired. I asked a question during the last sitting of the Council, No. 245, and answered on 8th September 1928. This is the question put by me :—

'Will the hon. the Law Member be pleased to state whether the Government intend appointing a committee as promised by his predecessor in his speech in the Council on 16th March 1927 to consider the modification of the Court Fees Act, if so, when?'

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"The answer was "there is no such intention at present." Clause (b):—

'Whether any such or similar proposals are before the Finance Committee or are intended to be placed before the said committee, if so, when?'

"The answer was 'no.' Clause (c) of the question:—

'Whether the Government have before them any proposals or intend taking any steps for the reduction of court-fees?'

"The answer was—

'the recommendations of the Taxation Enquiry Committee for the amendment of the Court Fees Act are under consideration.'

"My objection to this Bill is that there should be no tinkering with this problem. It is up to the Government to appoint a committee now as the Government of India have done practically nothing in the matter since 1925 when the Taxation Enquiry Committee submitted its report. It is nearly three years now. There is no use of discussing a piecemeal legislation like this. If the Government are in earnest, they must appoint a committee and see that the whole question is revised. We should not simply wait for the decision of the Government of India.

"The hon. Member was pleased to say that this Bill was really a boon to the litigant public. I think he is speaking without being aware of the conditions in the mufassal. If you take a district, say the district of South Kanara, there are in it six district munsifs, who have small cause jurisdictions extending up to between Rs. 100 and Rs. 300. It has one sub-court which has got jurisdiction up to Rs. 1,000, so that in five taluks out of six all the suits of the value of over Rs. 100 (or Rs. 300) have to be filed as original suits and the higher rate of $11\frac{1}{4}$ per cent will be levied instead of $7\frac{1}{2}$ per cent under the existing Act. Under the new Act, in five taluks out of six in my district you will have to pay $11\frac{1}{4}$ per cent on suits of Rs. 100 or (Rs. 300) up to Rs. 500. Those suits are many more than those between Rs. 500 and Rs. 1,000. There is absolutely no justification to authorize the Government to levy $11\frac{1}{4}$ per cent on suits which are of the nature of small cause ones. If you take this new Bill into consideration, the amount which the people have to pay as a whole will be much more than what they pay now. I earnestly request this House to oppose this measure wholly because we should not give any more power into the hands of this Government who want to tax us more than what we are paying at present. If they are earnest in their professions about the litigant public, it is up to them to appoint a committee at once to go into the whole question. Then this Bill and any other proposal that may be brought before the committee may be considered by them."

* Mr. D. NARAYANA RAJU:—"Mr. President, Sir, if the hon. the Law Member wants to give relief to the poor litigant public, he may come forward with a provision that all suits of small cause nature not exceeding Rs. 1,000 in value may pay the lower scale of fee. That, by itself, will be a very small relief to the litigant public. Not only the court-fees have been increased, but process-fees have been increased; witness batta has been increased; thus there has been an increase all round with regard to the cost of litigation. Therefore with regard to money suits, the Government may be pleased to say that all suits of a small cause nature should have the benefit of paying the smaller scale of fee. It will be of some benefit to the public. The enhancement of fees in the case of certain suits under the new Bill is highly objectionable. At present, all suits of small cause nature whether tried as

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small cause suits or as original suits have the benefit of the lower scale of fee. Now what is sought to be provided for in the Bill is that all suits of small cause nature which are tried as original suits will have to pay hereafter the higher scale of fee, viz., $11\frac{1}{4}$ per cent. This indirectly penalizes the litigant public for acts of the Government. It is not open to the litigants themselves to have their suits tried as small cause suits or as original suits at their will and pleasure. It all depends on the acts of the Government whether a particular suit is to be tried as a small cause suit or as an original suit. If the officer presiding over a particular court is transferred and some other junior officer is posted who has not got jurisdiction to try small cause suits to the value of Rs. 1,000, such suits will have to be tried as original suits. Then the litigant is asked to pay the higher scale of fee. It is not right and just on the part of the Government that the litigants should be asked to pay the higher scale of fee merely for the acts of the Government. If there is no court having the financial jurisdiction or if there is no officer at a particular time having jurisdiction to try suits of a particular value, those suits will have to be tried as original suits for no fault of the plaintiff or the litigant. It is all due to the exigencies of the public service whether a particular suit will be tried as a small cause suit or as an original suit. Under these circumstances it is not right that the plaintiffs should be asked to pay the higher scale of fee. Further, the provision in the amending Bill will lead to anomalies. At present, there is a class of suits, fixed and unalterable, which are entitled to the lower scale of fee. Hereafter, if this amending Bill is passed into law and if this principle is accepted, what will happen is that there will be no class of suits which would be entitled to the lower scale of fee. It all depends upon the exigencies of the presiding officer and of the court in which the suit will have to be filed. There will be no fixed set of suits which the litigant will be in a position to know, and in regard to which will be entitled to the benefit of the lower scale of fee. It will lead to uncertainty to the litigant public. They will not be in a position to know whether they will have to pay the higher scale of fee or the lower scale of fee for any particular suit; because, when the suit comes up for trial, if the presiding officer does not have the necessary jurisdiction, the litigant will have to pay the higher scale of fee; if the officer happens to have the necessary jurisdiction the litigant will have to pay the lower scale of fee. There will thus be uncertainty with regard to the classes of suits which will be entitled to the lower fee. It is not right that people should be left in uncertainty with regard to the class of suits which will have the benefit of the lower fee. It is always right and to the convenience of the public that there should not be any uncertainty about this question. At present there is no uncertainty at all. A particular class of suits, viz., suits of a small cause nature not exceeding particular value, are all entitled to the benefit of the lower fee. If the provision now before the House is accepted, there would be uncertainty. What are the arguments that are brought forward for this provision? It is stated that there is a right of appeal if it is an original suit. 'There is this advantage and therefore the litigant must be asked to pay the higher fee.' There is absolutely no substance in this argument. The litigant has to pay for the right of appeal. He has to pay for the appeal memorandum; he has to pay Court fee again. Therefore, the court fee to be paid when the suit is tried should not be made contingent upon the right of appeal. When an appeal is preferred, the litigant has to pay for it. For appeal

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memorandum he will have to pay the higher scale of fee; it is not the lower scale. Right of appeal is a costly business, and it has to be paid for separately. Therefore, that should not be a consideration for enhancing the fees. It is stated that the time taken, if a suit is tried as an original suit, will be much more than if it is tried as a small cause suit. It is more imaginary than real. Even if all suits of small cause nature are tried as original suits, they would not take much time; because, most of them will be uncontested; even if they are contested they would not take much time because they are all money suits and pro-note suits. The only difference is this: if it is an original suit, the presiding officer will have to take the memorandum in extenso. There will not be great disparity in the time taken to justify the enhancement of fees. Therefore this argument of the time taken is more imaginary than real and for want of any better argument this argument is put forward.

"After all, Sir, this argument is not a new argument. The same 4-15 arguments have been considered by the Council on the last occasion when p.m. this provision was introduced. In the year 1922, even in the original Bill, the provision existed that only suits tried as small cause suits should be entitled to the benefit of a lower fee. In the course of the discussion, all the anomalies were pointed out and in order to have an element of certainty about these things, all suits of a small cause nature were made entitled to this benefit. Therefore, the arguments now advanced by the hon. the Law Member are not new arguments. They were all discussed and found to be not good. I do not think that by the mere efflux of time they would become good. I therefore oppose this."

• * Diwan Babadur S. KUMARASWAMI REDDIYAR:—"Mr. President, Sir, while I join the hon. Members who appealed to the hon. the Law Member to take steps to bring forward a comprehensive measure for reducing the court fees in this province, I must confess that I cannot follow those hon. Members to my right who have advanced this need for a comprehensive legislation as an argument for the rejection of this Bill.

"Sir, there are two matters on which amendments are sought to be made. The second of them is not objected to by any hon. Member who has spoken so far. It will certainly afford some relief to the already over-taxed litigant who has got to file suits on the small cause side. As the Act stands at present, the enhanced court fee is levied in the case of small cause suits above the value of Rs. 500. The object of the second amendment is to reduce the court fee on such suits. With regard to the first amendment, the point of distinction between a small cause suit and a suit of a small cause nature has been clearly mentioned in the Statement of Objects and Reasons. Whether that distinction is such as to justify the levy of the enhanced rate of court fees in the case of suits of a small cause nature, that will be a matter legitimately for the consideration of the Select Committee which it is proposed to appoint under the resolution brought forward by the hon. the Law Member. At this stage, Sir, I would certainly protest against the observation made by one of the hon. Members speaking before me, that the Select Committee that has been proposed is a packed one. It is a committee which consists of members like the hon. Mr. J. A. Saldanha, the hon. Mr. Swami and the hon. Mr. Venkataramana Ayyangar who represent the Swarajist section of the House. Is such a Select Committee to be called a packed committee, I ask in all seriousness? I see, on going through the list of Select Committee members, that the committee consists of some of the

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most experienced lawyers that are in this House. I should certainly say that the observation that the committee is a packed one was an unjustifiable one.

"Apart from that, Sir, as I said, is the total rejection of the Bill brought forward by my hon. Friend going to serve any useful purpose? If by the rejection of the Bill the Government are going to be driven to bring forward a comprehensive Bill, then that might perhaps be accepted as a justification for the rejection of this Bill. But will the rejection bring any kind of pressure on the Government to bring forward a more comprehensive Bill? It is the litigant who is going to suffer by the rejection of this Bill, and not the Government. I think we shall be doing a disservice to the litigant public if we reject this Bill altogether. There are some provisions no doubt which involve serious controversy, but the Select Committee will go into them. As regards the first amendment, there is difference of opinion as to whether the amendment as it stands in the draft Bill is proper or whether further amendments on different lines ought to be made, and that is why the hon. the Law Member yielded to the request of several lawyers in this House and agreed that the provision of the Bill should be examined by the Select Committee. Therefore, Sir, though I join with the other hon. Members in the request that steps should be taken by the hon. the Law Member as early as possible for bringing forward a more comprehensive Bill, reducing the court fees which were enhanced, I certainly support the motion brought forward that this Bill be referred to a Select Committee."

MR. C. R. PARTHASARATHI AYYANGAR :—"Sir, whenever questions of money come up before the Government, they want to take advantage of the best opportunity to raise the tax in different ways. The litigant of course knows that he has to pay court fees at all costs; but he asks a simple question: 'Why should justice be taxed? I go to a court of law because I want justice; why not you dispense justice in the cheapest manner? Why should Government tax justice?' That is a very simple question no doubt, but it is very difficult to answer it. Just note the demoralizing effect which such enhanced fees will have on the people. We have come here, Sir, in order to raise the high level of the Government and not to lower it. We have come to the Legislature not to justify all sorts of methods of getting money from the tax-payers. It is for the purpose of making the Legislature do its work and to raise the tone of Government that we have come here. Whenever good things are done, we naturally bow our heads and say that we are prepared to abide by what they do; but if Government begin to tax the people more and more, where will the ordinary people go to. If the Government want more and more money, they are no better than the ordinary money-lender or the ordinary man in the street, if they find out all sorts of methods to get money from out of the people.

"The second point and a more salient point that I want to bring to the notice of the House is that this has an indirect effect not only of preventing the people from going to a court of law, but it has also the indirect effect of hitting at people who really form the backbone of the country, viz., the lawyers. It is a hit more at lawyers than on anybody else. It is a slight trick practised upon people who are prepared to put up a fight whenever a fight is necessary. After all, we must live, and lawyers also must live. If

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the present lawyers are not hit, then it is a hit upon the younger generation of lawyers. If the trick succeeds, the lawyers will have less income, and may not be able to keep up the fight. If it is an agitation for a political purpose, the lawyers are found even there; and it is with a view to put them down that this is being done. That is why I say it will amount to demoralisation. Anyhow, I would request the House to realize one thing: that there should be one uniform standard of fees. When a small cause suit is to be tried, there cannot be any difference between a small cause suit as such, and a suit of a small cause nature. Why should a higher scale of fee be levied for the one and a lower one for the other? I do not think the judge spends much more time on the one than on the other. The reason given by the hon. the Law Member is that more time is taken on an original small cause suit: but that argument is not really sound. It only shows that some excuse is sought to be put forward for the purpose of getting more money from the litigants and certainly not with a view to satisfy the real wants of the case. Whether the value is Rs. 500 or Rs. 1,000, it does not matter: some uniform standard must be observed. Small cause suits are small cause suits and they should always be taxed as such; there should be no distinction even among them, whether they are of the nature of a small cause suit or not.

"Therefore I should like very much that in a matter in which the Central Legislature has not given the lead, we should give the lead. This is in our own hands. Why should not the hon. the Law Member who has himself been a very able lawyer, who knows everything, give relief to the people in the matter of these court fees, especially when the provincial contribution has been removed? Why should he not take courage in both hands and say that we shall have a reduced rate of court fees? Why should what is given with one hand be taken away by the other? That is perhaps the Government way of doing things. But why should our own people behave as if they have no spirit, that higher spirit of helping their own fellowmen at the time of their difficulties? If they cannot do it, then who else can do it, I ask? If we cannot help our own countrymen, who else can do that? With these words, Sir, I oppose this motion."

* Rao Bahadur Sir A. P. PATRO:—"Sir, the hon. Member from Chittoor discovered a very sinister motive in the hon. Member for the introduction of this measure. He thinks that the Law Member is so very mischievous that he would punish the agitators, i.e., according to him, the vakil class, by enhancing the court fees and thereby decreasing their income. I regret that such an argument proceeds from such an experienced vakil as the hon. Member. When the Court Fees Act was amended in 1922 and an enhancement to the extent of 50 per cent was made in the matter of court fees, we find, notwithstanding, a multiplication of courts from that date and also a multiplication of judges from 1921 to 1928 from the High Court down to the munsif's court. We find that there is absolutely no reason for the apprehension which the hon. Member has given expression to. On the other hand, there is a very increasing crop of litigation in the mufassal courts. Recently I found in my district that not only the number of vakils multiplied but also, suits increased largely since I left work. Therefore there is absolutely no reason to say that the Bill is intended maliciously and mischievously to punish the vakils. Even if the vakil's income goes and if the litigant population are benefited by the raising of court fees I should be glad that it has been able to put down litigation for the benefit of the poor people.

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"Then Sir, on the merits of the Bill, we find that ever since the release of provincial contributions, all sides of this House unanimously demanded for the reduction of the court fees. I need hardly remind the House that in the year 1922 when the first Bill for the enhancement of the court fees was introduced there was a very distressing financial situation facing the country. The financial condition of Government was in a state of bankruptcy. There was a deficit of 144 lakhs at the time and the increase was made not only in order to make up for the loss in the previous year, but also to choke up deficit in the current year also. Therefore to make up that, it was thought that the stamp duties and court fees should be raised. We all-pleaded then that it should only be a temporary measure and that measure should be revoked as soon as the Government was in a position to give relief to the people. At that time the hon. Member who introduced the Bill was advised and from every side of this House he was told that he should bring forward a measure to reduce the tax soon as the Government were able to do so. Now, we find the budget showing a large surplus. The release of the provincial contributions gives us a saving of $3\frac{1}{2}$ crores of rupees out of which a large portion is a recurring revenue. The amount which was hitherto paid out of revenues is now saved to the Government. Therefore all the means are now available for the purpose of giving relief to the tax-payer. Speaking on the budget of 1926-27 I urged that the first duty of the Government after the release of the provincial contributions was to give relief to taxation, relief again to our dead-weight debts and thirdly to provide for development. At that time the Finance Member said that all that would be considered in course of time when full relief was granted by the Government of India. Now we have had the last instalment of relief given to us. What is it the Government have done in the matter of reducing the court fees, the stamp duties and registration fees? We have had an announcement that the registration fees would be reduced in certain directions. In the matter of court fees and stamp duties we have been told that they would be undertaken by the Government of India.

"In regard to the taxation measure, in the year 1923 an attempt was made to raise the revenue by means of introducing court fees for advocates' memoranda. In that case also the hon. the Law Member in charge wanted to introduce a nice distinction as it is attempted to be done in this Bill and the whole House stood up against that Bill and its principles. The history of these amendments of the Court Fees Act must be a warning. We have now this Bill in which the hon. Member has shown that by virtue of the Civil Courts Act sub-judges are vested with the power of trying suits the value of which varies from Rs. 500 to Rs. 1,000 which jurisdiction they had not at the time the Amendment Act was passed in 1922 and therefore lower rates of fees should be applicable on all such cases that will be triable by sub-judges. There is a fallacy in this. The sub-judge's jurisdiction is limited and it does not extend to the whole district in the matter of small cause suits. For instance, in my district, I learn it extends only to the original jurisdiction of the District Munsif of Berhampur. The number of small cause suits filed in the sub-judges' courts is very limited. Similarly if we take statistics for every district the number of small cause cases that are triable or tried by sub-judges would not be in proportion to what we would be taxed to pay under the first part. Therefore if the Statement of Objects and Reasons gave

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us a more lucid statement with regard to what advantages the country would gain by means of statistics showing that there would be so much of gain, then that would have convinced the House whether we should care or not.

"In regard to the other matter, namely, whether there is increased taxation, I am afraid there again the difficulty is very great. Take, for instance, small cause cases that are triable by munsifs. The munsif's jurisdiction is up to Rs. 300. He has got jurisdiction from Rs. 50 to 300. We have got two or three munsifs in each headquarter station and their jurisdiction varies. In the case of a district munsif if he has got full jurisdiction up to Rs. 300 it is well and good. If he is transferred and another takes the place he would not have that jurisdiction. Then all these suits, which are of the nature of small causes in reality, are transferred again to the original side. In that case they will have to pay enhanced court fees. This is a matter which has to be carefully considered by the Select Committee—whether such a provision is necessary or not.

"We are all agreed that any measure of taxation has to be considered very carefully so that the people may not be mulcted unjustly. In this Bill there is no other advantage shown to us by the hon. the Law Member which the litigant public will derive. This requires a close examination and I am sure if statistics are provided in support of the continuance of the fees the Select Committee will be able to judge the matter. Otherwise there must be difference of opinion on the matter and the Bill will have to be considered in regard to the whole. Regarding what I said in suits of small cause nature, is there a real need for such a change? That is one of the points which must be considered. If there is a real need, we have to scrutinize the Bill not merely from the financial point of view but from the administrative point of view also. I dare say this aspect of the matter will be considered very carefully by the Select Committee. I do not wholly object to the principles of this Bill, but I do say that it would be more satisfactory if a full measure is introduced for the purpose of giving relief to the tax-payer."

* Sriman BISWANATH DAS Mahasayo:—"Sir, the history of the agitation for the reduction of court fees and stamp duties has been a long, continuous and melancholy one. The hon. Sir Patro, my colleague, the Member from Ganjam, sees multiplicity of suits and prosperity of vakils and also believes in the desirability of perpetuating the enhanced stamp duties and court fees so as to make litigation prohibitive and if I followed him correctly he would put down the number of suits to any minimum. I leave him where he is and I leave him to his views. Sir, our difficulty is just the reverse. This agitation has been going on and three Law Members successively have promised time after time to see to the reduction of stamp duties and court fees: the late lamented Sir K. Srinivasa Ayyangar, Sir C. P. Ramaswami Ayyar and our hon. Friend from Malabar. Sir, speaking on this question of the reduction of stamp duties and court fees, my hon. Friend who now adorns the Treasury Bench made the following observations: 'I submit that a more favourable opportunity will never come. This is the most favourable opportunity.' That was in March 1927. Sir, since that time we had the remission of contributions of 3½ crores and still my friend would give us stones when we are asking for cakes. And going further he observes: 'I ask my Friend (Sir C. P. Ramaswami Ayyar) whether he expects a more favourable opportunity to come next year. I submit that the promise made

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by the Government on that occasion and repeated on another occasion must be fulfilled. It is a 'pledge which they are bound to redeem. For these reasons I support the motion.' I beg of him now that he is at the helm of affairs to come forward with the long and unfulfilled promise of Government and thus restore confidence which is so much waning. Sir, when Government brought about a number of supplementary demands in October last, we the members of the Congress party had to oppose those grants on the ground that we preferred remission of taxes to anything else, even, remunerative measures of the Government. Well, opinions had to differ and with the greatest reluctance and in view of our numerical inferiority we had to agree to that question being referred to the Finance Committee. Then we made it clear before it was referred to the Finance Committee that we had very little confidence in the justice and fairness that might be meted out to this question by the members of the Finance Committee as it was then constituted. With that reluctance we had to send the question to the Finance Committee and I will just read here an extract from the report of the Finance Committee on this very question. It is on page 248 of the Council Proceedings of the 1st November 1927: 'It (the Finance Committee) considers that the Government's programme of ameliorative measures should be continued; but at the same time it is of opinion that it is necessary to investigate how far the increased stamp duties (Judicial and non-Judicial) introduced by the Acts of 1922 may or should be reduced and how soon effect may be given to any reduction which may be found desirable. The committee proposes to start this investigation at once.' Well, Sir, after a lapse of about one year, my hon. Friend, whose sympathy for the poor and especially for the suffering ryots is unquestionable, comes forward with a Bill, which Heaven only knows how far it would go to help the suffering peasantry and suffering people of this Presidency! My hon. Friend from South Arcot has clearly shown that it will be more mischievous in its operation than do any good. Under these circumstances and looking into the picked nature of the members of the committee having settled views on this important question, I for myself oppose the whole question and refuse to be treated like a beggar. With these observations, I oppose this measure."

* Mr. C. RAMASOMAYAJULU:—"Enough has been said, Mr. President, about this matter to show that in the first place this measure is not comprehensive enough and it does not come up to the level that has been expected by the people for so long a time consequent on the remission of the provincial contribution. In the second place much has been said, and there is good reason for saying—that this Bill without giving effect to the wishes of the House brings in so many anomalies in the matter of taxation for court fees. I would limit myself to one or two anomalous conclusions to which we are necessarily led if we accept the Bill as now brought forward by the hon. the Law Member. One of such anomalies is this. With reference to the proviso which he intends to add to clause 2, I may say this, that the effect of the proviso is that in cases of suits of a small cause nature which are returned to the original side, the higher rate of court fee is leviable. Take the case of suits up to Rs. 1,000 of a small cause nature which are returned to the original side. This higher fee has to be paid in the case of suits of a small cause nature returned to the original side. So much so, against all the ordinary canons of taxation, the ordinary poor litigant who sues for a small amount is being penalized. That is the conclusion which stares the

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hon. the Law Member in the face and I believe he has not paid particular attention to it. He has necessarily to amend the Court Fees Act if he wants to really do some good to the poorer litigant. My point is that in the case of suits of the value below Rs. 1,000 of a small cause nature returned to the original side, the higher rate of court fee is leviable. That is the result of the two Bills. This is not just. This is against the ordinary canons of taxation, because the litigant suing for the lesser amount is penalized. Is it consistent, I ask? The Law Member does not seem to have paid sufficient attention to this matter, because if his two Bills are to be accepted by us in their entirety, they will lead to this anomalous position. This anomaly ought to be removed. I hope the Law Member will excuse me if I say that the proviso proposed to be added will not work in the interests of the litigant public. This is another reason why I oppose this Bill. There is neither law nor logic behind this proviso. It has been suggested that this transfer to the original side confers a right of appeal on the litigant which was absent before, and that it is an advantage. It is not any additional advantage at all, for, when the litigant prefers the appeal, he has to pay more in the shape of additional higher court fee. This is in addition to the fee paid on the original suit. So this claim of the right of appeal by reason of the suit being transferred to the original side does not stand to reason even for a minute, because he has got to pay for that right, and that more than he originally paid for the suit. There is another defect. I do not know whether the non-lawyer members of this House are aware of this defect. There happen to be some areas in several districts which are not covered by the jurisdiction of a subordinate court. In such places the courts have not got jurisdiction to entertain suits of small cause nature beyond Rs. 300. By reason of the proper courts not being located in some of the districts, the parties are being penalized.

"Therefore I would rather have a more thorough and a more comprehensive measure which is calculated to help the minor litigants, and relieve them by so wording the Bill as to make the basis of taxation to be the value of the suit but not the jurisdiction of the court at all. I can understand a delimitation being made on the nature of the suits stating that such and such kind of suits are liable for the smaller court fee and so on. But to say that all suits of a small cause nature instituted in the subordinate courts should come under the operation of the Bill is likely to cause hardship to that portion of the province which does not happen to be fortunate enough to come within the jurisdiction of a subordinate judge. Therefore my submission to the House is that the Law Member should apply his mind to the real point at issue, and see what is the difficulty the people are labouring under. If he is not able to remove the basic defects now, let us have at least the advantage of having a more comprehensive measure within the limits proposed by him. I very seriously doubt that even if the select committee take all these things into consideration, they will be able to achieve much in the way of removing the difficulties."

* Mr. S. SATYAMURTI:—"Mr. President, I am sorry my hon. Friend from Ganjam, the ex-Minister, is not here, because for the first time I heard him making an opposition speech. But unfortunately when he came to the end, he seems to have felt sick of it and he said that although he is against the principle of the Bill, he is for that principle being examined in the Select Committee. But that is between him and his constituency. As for my hon.

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Friend, the Law Member, I cannot congratulate him on the fact that the very first Bill which he brings forward, after he assumed office, should be a Bill where he has got to eat his own words literally. If he knew that he was doing it, I think he will not do it; I give him credit for it. But the tragedy of it is that he does not know what he is doing. Speaking on this subject of the reduction of court-fees on the 15th March 1928 when the office of Law Membership was not yet dangling before him, Diwan Bahadur M. Krishnan Nayar, as he then was, said this: 'I support this motion, Sir. As my friend, Mr. Madhavan Nayar said, this perpetual consideration of the Government must have an end.' (May I suggest to the hon. the Law Member in the words of Diwan Bahadur M. Krishnan Nayar that this perpetual consideration of the Government must have an end.) 'They (the Government) are always shifting and changing their grounds' [I ask the hon. the Law Member to listen to the words of Diwan Bahadur M. Krishnan Nayar (Laughter) and not to go on shifting and changing his ground] 'and want to avoid fulfilling their specific and express promise'. (I want the hon. the Law Member to listen to the words of Diwan Bahadur Krishnan Nayar in his characterization of the Government as people who want to avoid fulfilling their specific and express promises.) 'The first express promise was made in this House at the time of the imposition of the duties in 1922 and the promise was that when the financial pressure was at an end they would remit these duties to their former level. That promise has been practically made year after year for the last five years and as was referred to there was a distinct promise last year by my hon. Friend there, the hon. Khan Bahadur Usman Sahib. He made a distinct promise that when the remission of the provincial contributions was made the Government would consider this question. They must redeem their promise which stands unredeemed'. These are the pregnant words of Diwan Bahadur Krishnan Nayar, and he went on 'Even Governments must act according to their promise'. I think that because Diwan Bahadur Krishnan Nayar has now become the Member of Government in charge, he changes, because the Government as a Government is 'always shifting and changing'. This was on the 15th of March 1928, not very much earlier than six months. Again, Sir, on the 16th March 1927—my hon. Friend was an old hand at this—Diwan Bahadur Krishnan Nayar also said, 'I wish to support this motion. The duty was raised in the year 1922 when the present Home Member was also a Member of this Council though not on that side of the House. I am glad that he was then a Ministerialist. That was a time of deficit budgets in all the provinces and our province was threatened with a deficit of one crore and six lakhs of rupees. The Finance Committee and this Council explored all the avenues of fresh taxation to cover the deficit,' etc. Then, Sir, he refers to the answer of his hon. Friend, the Home Member, that is, 'this is not the proper time for giving up the stamp duties altogether, let us wait for a more favourable opportunity' and then Diwan Bahadur Krishnan Nayar added, 'I submit that a more favourable opportunity will never come. This is the most favourable opportunity. When the duty was imposed we were paying to the Central Government Rs. 348 lakhs, but to-day we have not to pay a single pie. There is of course the possibility of our being called upon to pay 49 lakhs next year but that is only a remote contingency which is not likely to occur. In any case about Rs. 300 lakhs have been permanently remitted in our favour. . . . I ask my friend whether he expects a more

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favourable opportunity to come next year'. Now three crores and a half have been completely and once for all remitted, and now I ask my friend the Law Member in the words of Diwan Bahadur Krishnan Nayar whether he expects a more favourable opportunity to come next year. He went on to say that 'the promise made by the Government on that occasion and repeated on another occasion must be fulfilled. It is a duty which they are bound to do.' I know what my hon. Friend's answer will be, that this is a measure which promises some relief to the litigants and increases the taxation in one respect. But hon. Member after hon. Member with considerable experience of litigation in his district has got up and proved, with a wealth of facts and figures which the hon. the Law Member, I know, cannot dispute, that the so-called relief is going to be thoroughly unsubstantial, but that the increase in the taxation is going to be substantial. I ask my hon. Friend to come out with facts and figures on this matter. Can he give any facts and figures to show the financial relief which this measure is going to afford to the litigant? He cannot give us and he knows he cannot. These are the reasons why I want the Bill not to be referred to a Select Committee. But there are some others who tell the hon. the Law Member that the Bill may go to the Select Committee and then they can fight there to have the defects remedied. To them my humble submission is this. This Government must be told that they cannot trifle with this House. The Justice party of which I see the leader here extracted a promise from the then Government that this rise in taxation would be only a temporary one. That promise must be fulfilled. This is the time for them to get the promise fulfilled. If they do not oppose the motion, it will only mean that for personal or political reasons they are not going to fulfil their promise. I appeal to them to oppose this motion. This is not a transferred department but a reserved department." (Laughter).

The RAJA OF PANAGAL:—"May I rise to a point of order? The hon. Member cannot address individual members in person but should address the Chair."

MR. S. SATYAMURTI:—"I have not addressed individual members. I hope my hon. Friend will live long enough to learn parliamentary etiquette. I ask the leader of the Party to remember that parties must also fulfil their promises, and to remember that the ministerial equilibrium will not be disturbed if for the sake of the people they stand up and say, 'we shall not be parties to increasing the taxation.'"

The House then adjourned to meet again at 11 a.m. the next day.

R. V. KRISHNA AYYAR, .
Secretary to the Legislative Council.